IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

CONRAD P. and ANN P.,	)	
	)	2 CA-JV 2007-0030
Appellants,	)	DEPARTMENT A
	)	
v.	)	MEMORANDUM DECISION
	)	Not for Publication
ARIZONA DEPARTMENT OF ECONOMIC SECURITY, EMMA M., MEGHAN M., and SEAN M.,	)	Rule 28, Rules of Civil Appellate Procedure
	)	
Appellees.	)	

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. 18084500

Honorable Ted B. Borek, Judge

REMANDED

Bernadette A. Ruiz — Tucson
Attorney for Appellants

Terry Goddard, Arizona Attorney General
By Claudia Acosta Collings — Tucson
Attorneys for Appellee Arizona
Department of Economic Security

H O W A R D, Presiding Judge.

¶1 Conrad P. and Ann P., the maternal grandparents of three minor children, Emma M., Meghan M., and Sean M., appeal from the juvenile court's denial of their motion to intervene in the children's dependency proceeding. Because we are not certain we

understand the juvenile court's reasoning in its ruling denying the motion to intervene, we remand for clarification.

¶2 On January 9, 2007, the Arizona Department of Economic Security (ADES) filed a dependency petition as to all three children based on allegations that child pornography had been sent by electronic mail from the family home, including messages from the parents' home computer that the two older girls, then six and eight years old, would participate in future sexual encounters. Finding that a factual basis for the dependency existed, the court adjudicated all three children dependent as to both parents at a hearing held on February 28, 2007.

¶3 The grandparents filed a notice of their right to participate, pursuant to A.R.S. § 8-847(B)(6), after which they filed a motion to become the children's placement and a motion to intervene for that purpose. When they filed the motion to intervene, the youngest child, not yet fifteen months old, had already been placed in the grandparents' home for a few weeks; the two older children were placed in the home a few days after the grandparents filed the motion to intervene. ADES objected to the motion, primarily arguing that it was moot because the children had already been placed with the grandparents and because intervention was not in the children's best interests. The mother also objected to the motion based on her concern that, as parties, the grandparents would be able to obtain sensitive discovery information related to the ongoing criminal investigation in which she was involved.

¶4 The grandparents then filed an "amended motion to intervene, motion for increased visitation, motion for approval of sitters and reply to objections to grandparents' motion to intervene." The juvenile court heard oral argument on the amended motion to intervene, at which ADES and attorneys for the children and both parents participated. Because the parties had not had sufficient time to respond to the grandparents' eighteen-page amended motion and other motions, the oral argument was limited, by consensus of the parties, to the legal issues related to the motion to intervene. This appeal arises from the court's denial, without prejudice, of that motion.[1]

¶5 The grandparents seek relief under Rule 24(b)(2), Ariz. R. Civ. P., the permissive intervention statute,[2] which has been held to apply in juvenile cases. *See William Z. v. Ariz. Dep't of Econ. Sec.*, 192 Ariz. 385, ¶ 7, 965 P.2d 1224, 1226 (App. 1998). The rule contains the following relevant provisions.

> Upon timely application anyone may be permitted to intervene in an action:
>
> . . . .
>
> 2. When an applicant's claim or defense and the main action have a question of law or fact in common.
>
> . . . .

[1]ADES is the only party that filed an answering brief on appeal.

[2]Although the original motion to intervene appeared to rely on both Rule 24(a) (intervention of right) and Rule 24(b) (permissive intervention), it is clear, based on the amended motion and the arguments of the parties, that the grandparents have requested permissive intervention pursuant to Rule 24(b)(2).

> In exercising its discretion the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.

¶6 Two Arizona cases provide guidance in this matter, both of which the juvenile court considered in its ruling. The first, *Bechtel v. Rose*, 150 Ariz. 68, 70, 72-74, 722 P.2d 236, 238, 240-42 (1986), was a special action in which our supreme court considered the juvenile court's application of Rule 24(b) to deny a grandmother's petition to intervene in the dependency proceeding of her parentless grandchild, whose mother had died and whose father had relinquished his parental rights. In *Bechtel*, the supreme court reasoned that "the trial court must first decide whether the statutory conditions promulgated in Rule 24(b)(1) or 24(b)(2) have been satisfied." *Id*. at 72, 722 P.2d at 240. If any condition for intervention exists, the trial court should then consider the following factors in making its decision:

> "These relevant factors include the nature and extent of the intervenors' interest, their standing to raise relevant legal issues, the legal position they seek to advance, and its probable relation to the merits of the case. The court may also consider whether changes have occurred in the litigation so that intervention that was once denied should be reexamined, whether the intervenors' interests are adequately represented by other parties, whether intervention will prolong or unduly delay the litigation, and whether parties seeking intervention will significantly contribute to full development of the underlying factual issues in the suit and to the just and equitable adjudication of the legal questions presented."

Id., *quoting Spangler v. Pasadena City Bd. of Educ.*, 552 F.2d 1326, 1329 (9th Cir. 1977). In *Bechtel*, the supreme court determined that, as a general rule, grandparents should be permitted to intervene in a parentless grandchild's dependency proceeding, unless such

intervention would not be in the child's best interests. *Id*. at 74, 722 P.2d at 242. However, the court also noted that its holding did not mean that "mere eligibility for consideration [as a guardian for a dependent grandchild] automatically confers a right to intervene in dependency proceedings." *Id*. Notably, the supreme court found that, in light of the juvenile court's summary denial of the grandmother's motion, it was left with "no indication at all as to why the motion was denied," nor did the record contain any evidence that the court had made an individualized determination of the best interests of the child. *Id*. at 72, 74, 722 P.2d at 240, 242.

¶7 More recently, in *Allen v. Chon-Lopez*, 214 Ariz. 361, ¶¶ 11, 13, 16, 153 P.3d 382, 386-87 (App. 2007), a special action, a majority of this court directed the respondent judge to reconsider his denial of an aunt's motion to intervene, reasoning that the court had improperly focused on the eventual outcome of the dependency proceeding rather than on the effect the intervention would have on that proceeding. Extending the *Bechtel* decision to a child who was not parentless, but whose parents were not meeting their parental obligations, we relied on *Bechtel* in *Allen*, reasoning that *if* the requirements of Rule 24(b)(2), common question of law or fact, have been met, "*then* the juvenile court must determine whether the party opposing intervention has made a sufficient showing that intervention is not in the child's best interest." *Id*. ¶ 12 (emphasis added). In *Allen*, we concluded that the aunt, who had had custody of the child, met the requirements of Rule 24(b)(2). *Id*. Having so found, we stated the court should then deny intervention only if

"the party opposing intervention has made a sufficient showing that intervention is not in the child's best interest." *Id*.

¶8 In its ruling here, the juvenile court interpreted *Bechtel* as follows:

> *Bechtel* forecloses consideration of whether there is a common question of law or fact in the instant case except as these issues may relate to best interests of the children at the various stages of the dependency proceeding and whether the parties seeking intervention will significantly contribute to development of underlying or factual or legal issues.

(Citation omitted.) It is this less-than-clear interpretation of *Bechtel*'s holding that the grandparents challenge, claiming the juvenile court's ruling was legally flawed because it was based on an incorrect understanding of *Bechtel*. Because we agree with the grandparents that the court's restatement of the holding in *Bechtel* is not helpful, and in light of the court's having conducted a best interest analysis despite having concluded the grandparents had not asserted a common issue of law or fact, we direct the juvenile court to clarify its ruling to assure it complies with the law established in *Bechtel* and expanded upon in *Allen*.

¶9 Accordingly, we remand the juvenile court's ruling in accordance with this decision.

JOSEPH W. HOWARD, Presiding Judge

CONCURRING:

J. WILLIAM BRAMMER, JR., Judge

PHILIP G. ESPINOSA, Judge